

REMARKS

The Examiner has rejected claims 1-13, 15-20, 24-28, and 32-40. Claims 14, 21-23, and 29-31 were previously canceled. As a result, claims 1-13, 15-20, 24-28, and 32-40 are pending for examination with claims 1, 20, and 28 being independent claims. No amendments have been made and no new matter has been added.

The Examiner has rejected claims 1-13, 15-20, 24-28, and 32-40 under 35 U.S.C. §103(a) as being unpatentable over USPN 6,330,569 B1 Baisley et al ("Baisley") in view of USPN 6,834,276 B1 Jensen et al ("Jensen"). The Examiner states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to, "combine Baisley and Jensen because, it would enable a user to predictably and efficiently perform a search on all relevant terms (Jensen, 4:25-33) and hence make editing or updating instructions more efficient." (FOA, pg. 3, lines 22-24)

Claim Elements Not Considered As Required by the Examiner

Claim 1 presents the following claim element that was not considered by the Examiner in the FOA as required to support a proper rejection under section 103:

"a program matching criteria matching at least one existing executable program to be updated by performing a first partial name search within an index followed by a second whole name search within the set of program entries specifying correction information; and"

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In the previous Office Action mailed 4/6/2005, the Examiner also did not consider the previous version of this claim element as presented in the Response filed 2/22/2005.

Accordingly, the Applicants submit that claim 1 was improperly rejected and is not unpatentable over Baisley in view of Jensen.

Claims 2-13, 15-19, 36, and 38 are dependent on claim 1. As such, claims 2-13, 15-19, 36, and 38 are believed allowable based upon claim 1.

Claim 20 presents the following claim element that was not considered by the Examiner in the FOA as required to support a proper rejection under section 103:

"third at program loading for execution executing a third search on at least a portion of the second set of potential matching entries to identify a program entry matching the particular program based upon the program matching criteria for the program entry;"

In the previous Office Action mailed 4/6/2005, the Examiner also did not consider the previous version of this claim element as presented in the Response filed 2/22/2005.

Accordingly, the Applicants submit that claim 20 was improperly rejected and is not unpatentable over Baisley in view of Jensen.

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Claims 24–27 and 39 are dependent on claim 20. As such, claims 24–27 and 39 are believed allowable based upon claim 20.

Claim 28 presents the following claim element that was not considered by the Examiner in the FOA as required to support a proper rejection under section 103:

"third at program loading for execution executing a third search on at least a portion of the second set of potential matching entries to identify a program entry matching the particular program based upon the program matching criteria for the program entry;"

In the previous Office Action mailed 4/6/2005, the Examiner also did not consider the previous version of this claim element as presented in the Response filed 2/22/2005.

Accordingly, the Applicants submit that claim 28 was improperly rejected is not unpatentable over Baisley in view of Jensen.

Claims 32–35, 37, and 40 are dependent on claim 28. As such, claims 32–35, 37, and 40 are believed allowable based upon claim 28.

Un-met Examiner Burden and Request for Examiner Affidavit for Official Notice

The second element of claim 1 calls for:

“a set of program entries specifying correction information for such particular identified programs, wherein individual ones of the set of program entries comprise: a whole name matching at least one existing executable program” (underlining added for emphasis)

The present invention provides:

“The set of program entries specify correction information for particular executable programs. Each individual entry within the set of executable program entries includes at least two information components. The first component comprises a program matching criteria. The contents of the program matching criteria are compared by a search/matching function to parameter values extracted from an executable program file to locate a matching program entry within the program modification database. The second component comprises a reference to at least one substitute program segment of the set of substitute program segments. The substitute program segments are provided in a variety of forms including functions, DLLs comprising APIs, in-memory patch bytes

(of data or instruction code), etc.” (pg. 4, line 7,
underlining added for emphasis)

“By way of example, an entry within the executable program entry index 204 includes a set of bytes corresponding to at least a portion of a program name. More specifically, each entry in the executable program entry index 204 contains a set number of bytes (e.g., 8 bytes) corresponding to a program name, or the first portion of the file name in the event that the file name exceeds the number of bytes for a single index entry.” (pg. 12, line 9, underlining added for emphasis)

“During step 412 the Get Match API 206 compares the name of the executable program (provided during step 400) to whole names of programs... In an embodiment of the invention, the pages of memory storing the whole program names are located at physical memory addresses near each other in the database and are read in one operation -- potentially speeding the lookup process by limiting accesses of a secondary memory device (e.g., a hard disk). A full-length string comparison is performed. The comparison in some instances provides false positives – e.g., there are many programs with the same name, like ‘DATABASE.EXE’” (pg. 23, line 12, underlining added for emphasis)

Baisley as cited by the Examiner, on the other hand provides:

"a. traversing depth-first an object tree of said XML representation, and for each object found in said object tree: 1) matching attributes to corresponding attributes for a corresponding object of said UML model, and if they match; 2) matching references with references for a corresponding object of said UML model, and if they match; 3) retrieving all objects owned by each object of said XML representation at current depth; 4) determining if corresponding object of said UML model has the same number of owned objects, and if so;" (Baisley, Col 9:50-60, underlining added for emphasis)

The Examiner further asserts with respect to the above noted reference from Baisley, Col 9:50-60:

"(9:50-60, see matching references, a name of id would have to be used to identify references to match)"
(FOA pg. 3, lines 1-2, underlining added for emphasis)

Applicants point out that Baisley teaches traversing an XML object tree and matching attributes and references for an object of a UML model. No where does Baisley teach anything related to, "a set of program entries specifying correction information for such particular identified programs" and the program entries comprising "a whole name

matching at least one existing executable program" (Claim 1, second element, underlining added for emphasis) Accordingly, Applicants traverse the Examiner's rejection and assert that the Examiner has not met the required burden to provide some suggestion of the desirability to include (MPEP 706.02(j)(¶7)), "a set of program entries specifying correction information for such particular identified programs"

Further, Applicants point out that an inferred "name of id" (as the Examiner reads into Baisley) has not been shown by the Examiner to be "a whole name" of a program as called for in the second element of claim 1. The Examiner is providing a motivation to modify based on knowledge of one skilled in the art. But Baisley is matching UML attributes and references, clearly not program names, whole or otherwise. There is simply no suggestion or motivation in Baisley for the Examiner's assertion. Further, Applicants point out that there are other ways to match than by using a name, such as using a GUID or binary data, for example. Accordingly, Applicants traverse the Examiner's assertion and respectfully request that the Examiner provide documentation supporting the assertion. (37 CFR 1.104(d)(2) and MPEP 2144.03)

Accordingly, the Applicants submit that, with respect to the second element, claim 1 is not unpatentable over Baisley in view of Jensen.

Claims 2-13, 15-19, 36, and 38 are dependent on claim 1. As such, claims 2-13, 15-19, 36, and 38 are believed allowable based upon claim 1.

CONCLUSION

Accordingly, in view of the above remarks detailing **the claim elements not considered by the Examiner, the un-met Examiner burden and the Request for Examiner Affidavit**, it is submitted that the claims have been improperly rejected and are patentably distinct over the prior art and that all the proper rejections to the claims have been overcome. Reconsideration and reexamination of the above Application is requested. Based on the foregoing, Applicants respectfully requests that the pending claims be allowed, and that a timely Notice of Allowance be issued in this case. If the Examiner believes, after this response to the FOA, that the application is not in condition for allowance, the Examiner is requested to call the Applicant's agent at the telephone number listed below.

Finally, please change the attorney docket number to 154597.01. This request was made in the previous amendment filed 2/22/2005 but appears to have been overlooked.

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RESPONSE AFTER FINAL

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,

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